

Present : **Shri Ajay Kumar Singh (J.O. Code : WB 01303),**  
Addl. District and Sessions Judge, 2<sup>nd</sup> Court,  
- Cum -  
Judge Special Court, Under the N.D.P.S. Act,  
Berhampore, Murshidabad.

**N.D.P.S Case No. 190 of 2018**

**CNR No. WBMD01-004645-2018**

|                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Complainant    | STATE OF WEST BENGAL<br>OR<br>NAME OF THE COMPLAINANT :<br><br>SI Samir Kumar Dutta                                                                                                                                                                                                                                                                                                                                                                                                                        |
| REPRESENTED BY | Mr. Abul Kalam Azad Biswas<br>(Ld. Special Public Prosecutor)                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| ACCUSED        | <p>1. Lalon Mandol<br/>Son of Lt. Badal Mandol<br/>@ Obaidul Mandol<br/>Of village Ramchandrapur<br/>PS Raninagar<br/>Dist. Murshidabad.</p> <p>2. Milon Shah<br/>Son of Khorsed Shah<br/>Of village Rajapur<br/>PS Raninagar<br/>Dist. Murshidabad.</p> <p>3. Ratan Sardar<br/>Son of Rabi Sardar<br/>Of village Dubapara<br/>PS Raninagar<br/>Dist. Murshidabad.</p> <p>4. Sainul SK @ Mandal<br/>Son of Samsuddin Sk. @ Mandal<br/>Of village Ramchandrapur<br/>PS Raninagar<br/>Dist. Murshidabad.</p> |

|                |                                                                                                                                                                                                                                |
|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                | 5. Bachhu SK<br>Son of Intajul SK<br>Of village Uttar Char Majhardiar<br>PS Raninagar<br>Dist. Murshidabad.<br><br>6. Sagar SK @ Capten<br>Son of Lalchand SK<br>Of village Ramnagarpara<br>PS Raninagar<br>Dist. Murshidabad. |
| REPRESENTED BY | Mr. Partha Pratim Biswas<br>Mr. Prosenjit Ghosh<br>Mr. Mirajul Mandal<br>Ld. Advocates.                                                                                                                                        |

FORM B

|                                      |                                                                         |
|--------------------------------------|-------------------------------------------------------------------------|
| Date of offence                      | 29.06.2018                                                              |
| Date of FIR                          | 29.06.2018                                                              |
| Date of charge sheet                 | No. 663/2018, dated 13.12.2018,<br>Submitted in the court on 18.12.2018 |
| Date of Framing of Charges           | 31.07.2019, 18.08.2020                                                  |
| Date of commencement of Evidence     | 25.02.2021                                                              |
| Date on which Judgement is reserved  | Nil                                                                     |
| Date of the Judgement                | 08.07.2026                                                              |
| Date of the Sentencing Order, if any | Nil                                                                     |

Accused details :

| Rank of the Accused | Name of Accused | Date of arrest | Date of release on Bail | Offences charged with         | Whether acquitted or convicted | Sentence imposed | Period of Detention Undergone during Trial for purpose of Section 428. Cr.P.C. |
|---------------------|-----------------|----------------|-------------------------|-------------------------------|--------------------------------|------------------|--------------------------------------------------------------------------------|
| 1                   | Lalon Mandol    | 29.06.2018     | 01.03.2021              | u/s 21(c) of the N.D.P.S. Act | Acquitted                      | Nil              | N.A.                                                                           |
| 2                   | Milon Shah      | 29.06.2018     | 01.03.2021              | u/s 21(c) of the N.D.P.S. Act | Acquitted                      | Nil              | N.A.                                                                           |

|   |                    |                             |            |                                                    |           |     |      |
|---|--------------------|-----------------------------|------------|----------------------------------------------------|-----------|-----|------|
| 3 | Ratan Sardar       | 29.06.2018                  | 01.03.2021 | u/s 21(c) of the N.D.P.S. Act                      | Acquitted | Nil | N.A. |
| 4 | Sainul SK @ Mandal | [surrendered on 10.01.2020] | 11.03.2020 | u/s 29 read with section 21(c) of the N.D.P.S. Act | Acquitted | Nil | N.A. |
| 5 | Bachhu SK          | 01.03.2019                  | 21.01.2020 | u/s 29 read with section 21(c) of the N.D.P.S. Act | Acquitted | Nil | N.A. |
| 6 | Sagar SK @ Capten  | 01.09.2018                  | 16.07.2021 | u/s 21(c) of the N.D.P.S. Act                      | Acquitted | Nil | N.A. |

Form C

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution :

| RANK | NAME                  | NATURE OF EVIDENCE<br>(EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS) |
|------|-----------------------|--------------------------------------------------------------------------------------------------------------------|
| PW1  | Samir Kumar Dutta     | SI of Police [Informant]                                                                                           |
| PW2  | Sanjit Mondal         | Independent seizure witness                                                                                        |
| PW3  | Mahesh Chandra Mondal | Independent seizure witness                                                                                        |
| PW4  | Raju Dey              | Constable of Police                                                                                                |
| PW5  | Motiur Rahaman        | Independent seizure witness                                                                                        |
| PW6  | Nayan Ali             | Independent seizure witness                                                                                        |
| PW7  | Saharul Molla         | Civic Volunteer                                                                                                    |

B. Defence Witnesses, if any :

| RANK | NAME | NATURE OF EVIDENCE<br>(EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS) |
|------|------|--------------------------------------------------------------------------------------------------------------------|
| Nil  |      |                                                                                                                    |

C. Court Witnesses, if any :

| RANK | NAME | NATURE OF EVIDENCE<br>(EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS) |
|------|------|--------------------------------------------------------------------------------------------------------------------|
| Nil  |      |                                                                                                                    |

**LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS****A. Prosecution :**

| Sr. No. | Exhibit Number                                                                                              | Description                                                                                                                                                                                                                                |
|---------|-------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1       | Exhibit 1,<br>Exhibit 2,<br>Exhibit 3,<br>Exhibit 4,<br>Exhibit 5,<br>Exhibit 6,<br>Exhibit 7.<br><br>(PW1) | GDE No. 1295 dt. 29.06.2018,<br>GDE No. 1296 dt. 29.06.2018,<br>MCC No. 563 dt. 29.06.2018,<br>Carbon copy of notice u/S 50 of the NDPS Act,<br>Nil seizure-list dated 29.06.2018,<br>Seizure-list dated 29.06.2018,<br>Written complaint. |
| 2       | Exhibit 4/1,<br><br>Exhibit 5/1,<br><br>Exhibit 6/1.<br><br>(PW2)                                           | Signature of PW.2 on the carbon copy of notice to the accused person u/S 50 of the NDPS Act,<br>Signature of PW.2 on the nil seizure-list dated 29.06.2018,<br>Signature of PW.2 on the seizure-list dated 29.06.2018.                     |
| 3       | Exhibit 8,<br><br>Exhibit 9.<br><br>(PW5)                                                                   | Signature of PW.5 on the carbon copy of notice to the witness,<br>Signature of PW.5 on the seizure-list dated 02.09.2018.                                                                                                                  |
| 4       | Exhibit 8/1,<br><br>Exhibit 9/1.<br><br>(PW6)                                                               | Signature of PW.6 on the carbon copy of notice to the witness,<br>Signature of PW.6 on the seizure-list dated 02.09.2018.                                                                                                                  |
| 5       | Exhibit 10,<br>Exhibit 11,<br>Exhibit 12,<br>Exhibit 13,<br>Exhibit 14.<br><br>(u/S 294/293 of Cr.P.C.)     | Rough sketch map of the P.O. with index dt. 30.06.18,<br>Rough sketch map of the P.O. with index dt. 02.09.18,<br>Exhibit challan dt. 30.06.18,<br>Exhibit challan dt. 03.09.18,<br>Report of SDCRL, Kolkata.                              |

**B. Defence :**

| Sr. No. | Exhibit Number | Description |
|---------|----------------|-------------|
| Nil     |                |             |

**C. Court Exhibits :**

| Sr. No. | Exhibit Number | Description |
|---------|----------------|-------------|
| Nil     |                |             |

**D. Material Objects :**

| Sr. No. | Material Object Number                                                           | Description                                                                                                                                                                                    |
|---------|----------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1       | Mat. Ext. I,<br>Mat. Ext. I/1,<br>Mat. Ext. II,<br>Mat. Ext. II/1,<br><br>(PW 1) | Sample bottle [A1],<br>Label of sample bottle [A1],<br>Sample bottle [A2],<br>Label of sample bottle [A2].                                                                                     |
| 2       | Mat. Ext. I/2,<br>Mat. Ext. II/2.<br><br>(PW 2)                                  | Signature of PW. 2 on the label of sample bottle [A1],<br>Signature of PW. 2 on the label of sample bottle [A2].                                                                               |
| 3       | Mat. Ext. III,<br><br>Mat. Ext. IV.<br><br>(PW 5)                                | Signature of PW. 5 on the label of sample bottle [A2] in respect of seizure dated 02.09.2018,<br>Signature of PW. 5 on the label of sample bottle [A1] in respect of seizure dated 02.09.2018. |
| 4       | Mat. Ext. III/1,<br><br>Mat. Ext. IV/1.<br><br>(PW 6)                            | Signature of PW. 6 on the label of sample bottle [A2] in respect of seizure dated 02.09.2018,<br>Signature of PW. 6 on the label of sample bottle [A1] in respect of seizure dated 02.09.2018. |

**J U D G M E N T**

1. The factual matrix of the prosecution case in brief is that on 29.06.2018 at 14.25 hours SI Samir Kumar Dutta [informant] received a secret source information that three youths would be arriving at Bank of Padma river at Rajapur with good quantity of Phensedyl in their possession for smuggling the same into Bangladesh. The informant diarized the matter vide GDE No. 1295 dated 29.06.2018 and informed the matter to then OC, Raninagar PS, the then CI, Domkal and the then SDPO, Domkal over telephone. Thereafter the informant along with force after taking permission from his superior for conducting raid left PS to act upon the said source information. On the way to the spot, the informant invited two disinterested public witnesses, namely Sanjit Mandal and Mahesh Mandal and requested them to be present at the spot during search/seizure procedure and accordingly they agreed to that proposal. They reached at the spot at 15.25 hours. Thereafter at about 15.45 hours they found three persons who were moving towards Bangladesh with loaded nylon sacs. On seeing the police, they had tried to flee away but the police personnel managed to apprehend them with loaded nylon sacs. On interrogation they disclosed their names as Lalon Mandal, Milon Shah and Ratan Sardar. The informant informed the detained persons that they would be searched in

presence of a Gazetted Officer/Magistrate and the detained persons stated in writing that they would be searched in presence of a Gazetted Officer. Thereafter the informant sent a requisition to the then CI, Domkal, namely Sri Jyotirmoy Bagchi requesting him to reach at the spot as a Gazetted Officer. At 17.45 hours Sri Jyotirmoy Bagchi, the then CI, Domkal, reached to the spot. The informant stated the detained persons to search the police personnel and the detained persons searched the members of the raiding party team but found nothing objectionable. Accordingly a nil seizure list was prepared by the informant. Thereafter the informant conducted search in presence of the Gazetted Officer and the independent seizure witnesses in this case and recovered three white colour nylon sacs loaded with total 300 bottles of Phensedyl of 100 ml. each from the possession of the accused persons. The informant collected two samples from the mother sacs and marked them as [A1 and A2] and the mother sacs were marked as [A, B and C] respectively. The bottles of Phensedyl were packed, sealed, labelled and seized by preparing a seizure-list in presence of disinterested seizure witnesses and the then CI, Domkal. Thereafter the informant arrested the detained persons and brought them to Raninagar PS where he lodged a typed complaint against the accused persons along with the seized alams of this case for starting a specific case against them.

2. Out of such typed complaint, Raninagar P.S case No. 282 of 2018 dated 29.06.2018 was started under section 21(c)/29 of the N.D.P.S. Act and the case was endorsed to PSI Debasish Ghosh for investigation. During investigation PSI Debasish Ghosh [IO] has arrested another accused person namely Sagar Sk. @ Captan and recovered 100 bottles of Phensedyl from his possession on the bank of river Padma at Ramchandrapur under Raninagar PS on 02.09.2018. Accordingly, after conclusion of investigation the I.O. of this case had submitted charge-sheet against the accused persons under section 21(c)/29 of the N.D.P.S. Act.

3. Copies of the relevant documents were supplied upon the accused persons under section 207 Cr.PC and thereafter charge was framed against accused Lalon Mandol, Milon Shah, Ratan Sardar and Sagar Sk @ Captain for the offence punishable under Section 21(c) of the N.D.P.S. Act and charge was also framed against accused Bachhu Sk and Sainul SK @ Mandal u/S. 29 of the NDPS Act. The contents of charge were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried. Hence, this trial.

4. The defence case, as it appears from the trend of cross examination of different witnesses as well as examination of the accused persons under Section 351 of BNSS, 2023 / Section 313 Cr.PC, is denial of the case of the prosecution and that the accused persons have been falsely implicated in the instant case. However the accused persons did not prefer to adduce any evidence in their defence despite opportunity was given to them.

5. Prosecution examined as many as seven (7) witnesses in all. The documents and the articles from the side of the prosecution have been marked as Exhibit 1 to Exhibit 14 and Material Exhibit I to Mat Ext. IV/1.

#### **POINTS FOR DETERMINATION**

1. Whether accused Lalon Mandol, Milon Shah and Ratan Sardar on 29.06.2018 in between 05.55 p.m. to 07.05 p.m. at Rajapur by the side of river Padma, under Raninagar PS, District Murshidabad were found in conscious possession of three white colour nylon sacs containing 300 bottles of Phensedyl, in contravention of provision of N.D.P.S. Act and that they thereby committed an offence punishable under section 21(c) of the N.D.P.S. Act ?

2. Whether one white colour nylon sac containing 100 bottles of Phensedyl was recovered from accused Sagar Sk. @ Captain on 02.09.2018 in between 04.05 p.m. to 05.15 p.m. at Ramchandrapur on the bank of river Padma, under Raninagar PS., District Murshidabad over which he had constructive possession following the information given by him and also after the place being pointed out by him and that he thereby committed an offence punishable under section 21(c) of the N.D.P.S. Act ?

3. Whether accused Bachhu Sk. and Sainul SK @ Mandal were party to a criminal conspiracy to commit an offence in the illegal business of Phensedyl with accused Lalon Mandol, Milon Shah, Ratan Sardar and Sagar Sk. @ Captain violating the provisions of NDPS Act and they thereby committed an offence punishable under Section 29 read with section 21(c) of the N.D.P.S. Act ?

4. Whether the Prosecution has been able to prove its case beyond reasonable doubt ?

#### **EVIDENCE ON RECORD**

6. Prosecution has examined seven (7) witnesses out of seventeen witnesses cited in the charge-sheet in this case. Let me scan what they have testified before this court to prove the case of the prosecution.

7. PW.1 [SI Samir Kumar Dutta] is the informant of this case. He has stated in this testimony before this Court that he is S.I of Police attached with Sagardighi P.S. On 29.06.2018 he was posted at Raninagar P.S. in the same capacity. He has further stated that on that day, at about 2.25 p.m. he received an information to the effect that three persons were coming at Rajapur beside river Ganga with huge amount of Phensedyl and accordingly he informed the then O.C., Raninagar P.S., the then C.I., Domkal and the then S.D.P.O., Domkal over phone about the said information and diarized the same vide Raninagar P.S. G.D. Entry No.1295 dated 29.06.2018. Thereafter, after obtaining permission from his superiors, he left the P.S. with force. Before leaving P.S., he diarized the fact vide Raninagar P.S. G.D. Entry No. 1296 dated 29.06.2018 and M.C.C. No. 563/18. PW.1 has further stated in his testimony that on the way, he picked up two independent witnesses and shared the information with them. He has also stated that they reached at the spot at 3.25 p.m. and remained at a distance. At 3.45 p.m. they observed that three persons, carrying sacs on their heads, were coming towards the river. On seeing the police personnel, they tried to run away but the police personnel apprehended all of them. PW.1 told them the reason for their detention and also served a written notice upon them informing them about the information that they may be searched in presence of a Gazetted Officer/Magistrate. PW.1 has further stated that on questioning, those persons disclosed their names as Lalon, Milan and Ratan and they wanted to be searched in presence of a Gazetted Officer. Thereafter PW.1 called the then C.I. Domkal by sending a requisition to him. At 5.45 p.m. the then C.I., Domkal reached at the spot. Thereafter, PW.1 told the detained persons to search the members of the raiding party team and they searched them but found nothing objectionable. Thereafter, PW.1 prepared a 'nil' seizure list as per request of the detained persons. PW.1 has also stated that thereafter he opened the sacs in their possession one by one and found that each sack contained 100 bottles of Phensedyl. All the bottles were of same look and by the same manufacturer namely Abbott company. Thereafter PW.1 mixed them together and took out two samples therefrom and marked them as [A1 and A2]. Thereafter he kept 98 bottles in one sac and 100 bottles each in two sacs. Those were sealed, labelled and PW.1 obtained signatures of accused persons, witnesses and Gazetted Officer. Thereafter they returned to the P.S. and prepared a written complaint addressing the then O.C., Raninagar PS. Thereafter PW.1 handed over all the articles, documents and accused persons to the then Duty Officer. PW.1 has proved Raninagar P.S. G.D.E. No. 1295 dated 29.06.2018, Raninagar P.S. G.D.E. No. 1296 dated 29.06.2018, M.C.C. No. 563 dated 29.06.2018, notice



u/s 50 of N.D.P.S. Act, nil seizure list dated 29.06.2018, seizure list dated 29.06.2018 and written complaint which were marked as Ext. 1, Ext. 2, Ext. 3, Ext. 4, Ext. 5, Ext. 6 and Ext. 7 respectively. PW.1 has also proved sample bottle marked [A1], label of sample bottle [A1], sample bottle marked [A2] and label of sample bottle [A2] which were marked as Mat. Ext. I, Mat. Ext. I/1, Mat. Ext. II, Mat. Ext. II/1 respectively. PW. 1 has failed to identify the accused persons, present on dock. Be it mentioned here that at the time of examination of PW.1, Ld. Special P.P. has produced three white coloured plastic sacs and it has been found that two sacs were in torn condition and the third one was found in unsealed and open condition having no labels either outside or inside, hence, the same were not tendered by the prosecution for the purpose of proving this case.

8. In his cross-examination, PW.1 has denied that G.D. Entry no. 1296 [Ext.2] was not fully written by him. During his cross-examination, PW.1 has admitted that in Ext. 3 there is mention of three force accompanying him but in the written complaint, there is mention of three civic volunteers but their names were not mentioned in the M.C.C. PW.1 has further admitted that the bank of river Ganga is quite large at Radhapur. He has also admitted that there were no houses near the P.O. He has further admitted that the nearest residences of the people was about 300 meters away from the P.O. and he did not approach those persons. PW.1 has also admitted in his cross-examination that the B.O.P. was 3 km. away from the P.O. but he did not contact any Gazetted Officer of the said B.O.P. excluding the then C.I., Domkal. PW.1 has further admitted that their vehicle was not searched. He has also admitted that the bottles of Phensedyl have batch number mentioned on it but he did not mention the same in any document. PW.1 did not put any distinguishing mark on the bottles. On the notice it was not mentioned at which place it was prepared. The bottles were counted but no chart was prepared and the bottles were counted in lots. PW.1 did not enquire about the profession of the witnesses or the distance of their houses from the P.O. PW.1 has denied the other suggestions put by the Ld. Advocate for the Defence.

9. PW.2 [Sanjit Mondal] is a disinterested seizure witness in this case. He has stated in his evidence that he is a resident of Char Rajanagar under PS Raninagar. He has further stated that it takes about 7/8 minutes to reach river Padma from his house. PW.2 has proved his signatures on the nil seizure-list dated 29.06.2018, seizure-list dated 29.06.2018 and carbon copy of notice to the accused person which were marked as Ext. 5/1, Ext. 6/1 and Ext. 4/1

respectively. PW.2 has also proved his signatures on the labels of sample bottles [A1 and A2] which were marked as Mat. Ext. I/2 and Mat. Ext. II/2 respectively. PW. 2 has further stated in his testimony before this Court that a long time ago there was a problem in his village and many villagers went to the PS and at that time PW.2 was asked to sign on the documents. PW.2 denied that he was interrogated by the police. Thereafter PW.2 was declared hostile by the prosecution and during his cross-examination by the Ld. Special P.P., PW.2 has denied that he was interrogated by the I.O. of this case on 30.06.2018 and that he stated to the I.O. that on 29.06.2018 at about 3.30/3.45 p.m. police of Raninagar PS called him and his co-villager Mohesh and that the second officer told them that three persons were proceeding towards river Padma with huge amount of Phensedyl and that thereafter police took them to a place near Padma river and that after waiting 20/25 minutes they saw three persons with loaded sacs were coming on foot and that after seeing police they tried to run away but the police apprehended them with sacs and that on questioning they disclosed their names as Ratan Sardar, Milan Shah and Lalon Mondal and that after sometime CI, Domkal came there and that in their presence the second officer searched the detained persons and the sacs and that from each sac 100 bottles, total 300 bottles, were recovered and that their officer prepared documents and sealed, labelled and packed the bottles and that he signed and Mahesh put LTI on the documents. He has also denied that he deposed falsely to save the accused persons. In his cross-examination by the Defence, PW.2 could not say why his signatures were taken.

10. PW.3 [Mahesh Chandra Mondal] is another disinterested seizure witness in this case. He has stated in his testimony before this Court that he is a resident of Char Rajanagar under Raninagar PS. PW.3 has further stated that it takes about 7/8 minutes to reach river Padma from his house. PW.3 has further stated that he could not sign. He has also stated that at Rajanagar, police personnel were present and many people were also present there. He has also stated that at that time his LTIs were taken by the police. In his cross-examination, PW.3 could not say why or on which date his LTIs were taken.

11. PW.4 [C/1506 Raju Dey] is a member of the raiding party team. He has stated in his testimony before this Court that on 29.06.2018 he was posted at Raninagar P.S. On that day, he, along with Constable Ajahar and another, went to Rajapur village by the side of Padma with S.I. Samir Dutta. PW.4 has further stated that they waited there for 20/25 minutes and in the meantime, SI Samir

Dutta went to the nearby village and called two persons. As per direction of SI Samir Kr. Dutta they went to the P.O. with instruments for testing Phensedyl. PW. 4 has further stated that they had observed that three persons, with sacs over their heads, were trying to cross the border towards Bangladesh. They tried to run away after seeing the police personnel but the police personnel managed to apprehend them after chase. Then those persons said that the police personnel could not search them. Thereafter the then C.I. was called. At 6.00 p.m. the then C.I. reached at the spot and in his presence the sacs were opened. In each of the three sacs, there were 100 bottles of Phensedyl. He has further stated that on interrogation they disclosed their names as Milan Shah, Ratan Mandal and Lalon. PW. 4 has also stated that as those persons failed to show valid documents, they were arrested. PW.4 has failed to identify the accused persons, present on dock. In his cross-examination, PW.4 has admitted that he has no document to show that he went to the spot on the relevant day. PW.4 has also admitted that B.S.F. outpost was within a distance of 1 km. from the P.O. and the office of C.I., Domkal was about 15/30 km. away from the spot. PW.4 has also admitted that they all counted the bottles. PW.4 has further admitted that he did not count the bottles, those were counted by civic volunteers. He has also admitted in his cross-examination that marks were put on the bottles. PW.4 has denied the other suggestions put by the Ld. Advocate for the Defence.

12. PW.5 [Motiur Rahaman] is another disinterested seizure witness in this case. He has stated in his evidence that he is a resident of Char Ramchandrapur under PS Raninagar. He has further stated that it takes about 25 minutes to reach river Padma from his house on foot. He has also stated that he signed in English. PW.5 has further stated that someone asked him to sign and he put his signature on the document asked by him. PW. 5 has proved his signatures on the carbon copy of notice to the witness and seizure-list dated 02.09.2018 which were marked as Ext. 8 and Ext. 9 respectively. PW.5 has also proved his signatures on the labels of sample bottles [A2 and A1] which were marked as Mat. Ext. III and Mat. Ext. IV respectively. PW. 5 has further stated that about 3/4 years ago police came to their village over a dispute in their locality. At that time his signatures were taken on some documents as proof of their coming into their locality. He has also stated that he was not interrogated by the police. PW.5 was declared hostile by the prosecution and during his cross-examination by the Ld. Special P.P., PW.5 has denied that he was interrogated by the I.O. of this case on 02.09.2018 and that he stated to the I.O. that on 02.09.2018 at about 1.30/2.00 p.m. he along with Nayan were proceeding along the road and

that at that time police came to their village with one apprehended person and that police called them and asked their names and address and that police also disclosed name of the apprehended person as Sagar Sk. and that they came to know that said person concealed some Phensedyl in the bank of river Padma and that he was about to brought out those Phensedyl and that Sagar Sk. showed a white sac by the side of river Padma and that photograph of the sac was taken and that after sometime CI, Domkal came there and that all the documents were prepared and Phensedyl were seized and that he and Nayan signed on the documents as witness. PW.5 has also denied that he deposed falsely to save the accused person. In his cross-examination by the Defence, PW. 5 has admitted by saying that he signed on blank papers not affixed on anything.

13. PW.6 [Nayan Ali] is another disinterested seizure witness in this case. He has stated in his evidence that he is a resident of Char Ramchandrapur under PS Raninagar. PW.6 has further stated that he knows Motiur Rahaman who is his co-villager. PW. 6 has also stated that it takes less than 20 minutes to reach river Padma from his house on foot. He has also stated that he never signed on any document with Motiur. PW.6 has proved his signatures on the carbon copy of notice to the witness and seizure-list dated 02.09.2018 which were marked as Ext. 8/1 and Ext. 9/1 respectively. PW.6 has also proved his signatures on the labels of sample bottles [A2 and A1] which were marked as Mat. Ext. III/1 and Mat. Ext. IV/1 respectively. PW. 6 has further stated that on the relevant day he was coming from field riding on a motorcycle and police was going to the opposite direction. Police asked him to stop and it was near Padma river. Police asked him about his name and address and also asked him to put his signature on a paper and accordingly PW.6 signed on only one paper. PW.6 has further stated that he was not interrogated by police. PW.6 was declared hostile by the prosecution and during his cross-examination by the Ld. Special P.P., PW.6 has denied that he was interrogated by the I.O. of this case on 02.09.2018 and that he stated to the I.O. that on 02.09.2018 at about 1.30/2.00 p.m. he along with Motiur were proceeding along the road and that at that time police came to their village with one apprehended person and that police called them and asked their names and address and that police also disclosed name of the apprehended person as Sagar Sk. and that they came to know that said person concealed some Phensedyl in the bank of river Padma and that he was about to brought out those Phensedyl and that Sagar Sk. showed a white sac by the side of river Padma and that photograph of the sac was taken and that after sometime CI, Domkal came there and that all the documents were prepared and Phensedyl

were seized and that he and Motiur signed on the documents as witness. PW.6 has also denied that he deposed falsely to save the accused person. Ld. Advocate for the Defence did not prefer to cross-examine him despite opportunity was given to him.

14. PW.7 [CV Saharul Molla] is another member of the raiding party team. He has stated in his testimony before this Court that on 29.06.2018 he was posted at Raninagar PS in the same capacity. On that day, he went to Rajapur village by the side of river Padma with SI Samir Kumar Dutta. PW.7 has further stated that three persons were apprehended with Phensedyl and on interrogation they disclosed their names as Ratan Sarkar, Milan Sahoo and another person. He has also stated that the accused persons were brought to the PS. PW. 7 has failed to identify the accused persons, present on dock. In his cross-examination, PW. 7 has admitted that he has no document to show that he went to Rajapur village on that day. He has also admitted that there was no house near the PO. PW. 7 has denied the other suggestions put by the Ld. Advocate for the Defence.

#### **DECISION WITH REASONS**

15. During advancement of argument Ld. Special P.P. has submitted that the prosecution has examined seven (7) witnesses in this case and the prosecution has been successful to prove its case beyond reasonable doubt regarding the accusation against the accused persons against whom the charge has been framed by this court u/S. 21(c)/29 of the NDPS Act. During advancement of argument Ld. Special P.P. has also submitted that PW.1, being the informant of this case, has testified before this court regarding search and seizure of contraband articles in terms of 300 bottles of Phensedyl from accused Lalon Mandol, Milon Shah and Ratan Sardar and 100 bottles of Phensedyl from accused Sagar Sk. @ Captain. He has further contended that other prosecution witnesses have corroborated the evidence of PW.1 (informant).

16. Ld. Special P.P. has further contended that minor omissions, contradictions and discrepancies in the prosecution witnesses or procedural lapses/flaws, if any, on behalf of the investigating agency should not be taken into consideration, as they cannot form grounds for rejecting the evidence on record as a whole. During advancement of argument, Ld. Special Public Prosecutor has submitted that the prosecution has successfully proved its case by leading cogent evidence and proving the requisite documents before this court. He has further contended that in this case informant (PW.1), has corroborated the contents of the FIR and the raiding party members (PW.4 and PW.7) have also

corroborated the version of the informant. He has further submitted that the search and seizure of contraband substance from the possession of the accused persons, being proved, the presumption u/S. 35 read with Section 54 of the NDPS Act are available in favour of the prosecution. In light of his submission, so advanced, Ld. Special P.P. has contended that the prosecution has successfully proved its case and the accused persons are liable to be convicted.

17. Per Contra, Ld. Advocate for the Defence during argument has raised the procedural flaws during search and seizure of the contraband articles in the instant case. Ld. Advocate for the Defence has further submitted that the prosecution case is full of procedural lapses. During advancement of his submission he has further contended that the independent public witnesses (PW.2, PW.3, PW.5 and PW.6) have not supported the case of the prosecution before whom the search/seizure procedure was conducted and for that reason the prosecution has declared PW.2, PW.5 and PW.6 as hostile. In this connection he has informed this court that the independent public witnesses (PW.2, PW.5 and PW.6) cited as seizure witness by the prosecution have testified by stating that they were not interrogated by the I.O. regarding this case. He has further contended that as per the prosecution story, PW.3 put his LTI on the seizure list dated 29.06.2018 but there is no endorsement on the seizure list who has identified the LTI of PW.3. Therefore, the entire search and seizure procedure in this case got vitiated since the search/seizure procedure was not followed in accordance with law as prescribed under the NDPS Act. Therefore, he has contended that benefit of doubt goes in favour of the accused persons and the accused persons may be acquitted from this case.

**Appreciation of evidence, discussion, decision and reason thereof**

18. Perused the case record, the evidence of the prosecution witnesses and the exhibits proved by the prosecution. In this case prosecution has examined seven witnesses out of twenty charge-sheeted witnesses. Let me scrutinize the testimonies of the prosecution witnesses what they have stated before this court to prove the case of the prosecution.

19. During appreciation of prosecution evidence, I do find that prosecution has examined seven witnesses to prove its case out of twenty charge sheet witnesses. It also appears from the case record that prosecution has not examined the Gazetted Officer [the then CI, Domkal namely Shri Jyotirmoy Bagchi] and the two IOs of this case namely PSI Debasish Ghosh and SI Asit

Pramanik for the reason best known to it despite they have been cited as charge sheet witness in this case. It is the case of the prosecution that on 29.06.2018 at 14.25 hours SI Samir Kumar Dutta [informant] received a secret source information that three youths would arrive at Bank of Padma river at Rajapur with good quantity of Phensedyl in their possession for smuggling the same into Bangladesh. The informant diarized the matter vide GDE No. 1295 dated 29.06.2018 and informed the matter to then OC, Raninagar PS, the then CI, Domkal and the then SDPO, Domkal over telephone. Thereafter the informant along with force after taking permission from his superior for conducting raid left PS to act upon the said source information. On the way to the spot, the informant invited two disinterested public witnesses, namely Sanjit Mandal and Mahesh Mandal and requested them to be present at the spot during search/seizure procedure and accordingly they agreed to that proposal. They reached at the spot at 15.25 hours. Thereafter at about 15.45 hours they found three persons who were moving towards Bangladesh with loaded nylon sacs. On seeing the police, they had tried to flee away but the police personnel managed to apprehend them with loaded nylon sacs. On interrogation they disclosed their names as Lalon Mandal, Milon Shah and Ratan Sardar. The informant informed the detained persons that they would be searched in presence of a Gazetted Officer/Magistrate and the detained persons stated in writing that that they would be searched in presence of a Gazetted Officer. Thereafter the informant sent a requisition to the then CI, Domkal, namely Sri Jyotirmoy Bagchi requesting him to reach at the spot as a Gazetted Officer. At 17.45 hours Sri Jyotirmoy Bagchi, the then CI, Domkal, reached to the spot. The informant invited the detained persons to search the police personnel and the detained persons searched the members of the raiding party team but found nothing objectionable. Accordingly a nil seizure list was prepared by the informant. Thereafter the informant conducted search in presence of the Gazetted Officer and the independent seizure witnesses in this case and recovered three white colour nylon sacs loaded with total 300 bottles of Phensedyl of 100 ml. each from the possession of the accused persons namely Lalon Mandal, Milon Shah and Ratan Sardar. The informant collected two samples from the mother sacs and marked them as [A1 and A2] and the mother sacs were marked as [A, B and C] respectively. The bottles of Phensedyl were packed, sealed, labelled and seized by preparing a seizure-list in presence of disinterested seizure witnesses and the then CI, Domkal. Thereafter the informant arrested the detained persons and brought them to Raninagar PS where he lodged a typed complaint against the accused persons along with the

seized alamsats of this case for starting a specific case against them.

20. At the outset, during appreciation of prosecution evidence, I do find that the two IOs of this case [PSI Debasish Ghosh] and the then Gazetted Officer [the then CI, Domkal] have not been examined by the prosecution, for the reason best known to it and hence, formal FIR, Rough Sketch Map of the PO with index, chemical examination report and other necessary documents of this case have not been proved in accordance with law which I am of the view is fatal for the prosecution case and the benefit of doubt goes in favour of the accused persons.

21. It transpires from the cross-examination of PW.1 that G.D. Entry no. 1296 [Ext.2] was not fully written by him. It also transpires from his cross-examination that in Ext.3 there is mention of three force accompanying him but in the written complaint, there is mention of three civic volunteers but their names were not mentioned in the M.C.C. It also transpires from the cross-examination of PW.1 that the B.O.P. was 3 km. away from the P.O. but the informant did not contact any Gazetted Officer of the said B.O.P. excluding the then C.I., Domkal.

22. I also do find that PW.2 [Sanjit Mondal] and PW.3 [Mahesh Chandra Mondal] are the independent seizure witnesses in respect of seizure-list dated 29.06.2018 [Ext.6]. During testimony of PW.2, he has proved his signature on the seizure-list and his signature was marked as Ext.6/1. However PW.2 has denied that he was interrogated by the police. At the same time, it transpires from his cross-examination that he could not say why his signatures were taken by the police. It is pertinent to mention here that prosecution has declared this witness as hostile, however nothing incriminating surfaced from his cross examination by the prosecution. On the other hand, PW.3 has not stated anything material to prove the case of the prosecution. It is to be noted that prosecution has claimed that PW.3 had put his LTI on the seizure-list dated 29.06.2018 (Ext.6). However this witness could not say why or on which date his LTIs were taken. It is also not clear from the seizure-list dated 29.06.2018 who identified the LTI of PW.3. Such anomalies and discrepancies raises doubt regarding the case of the prosecution and benefit of doubt goes in favour of the accused persons.

23. It is the further case of the prosecution that during investigation PSI Debasish Ghosh [1<sup>st</sup> IO] has arrested another accused person namely Sagar Sk.



@ Capten and recovered 100 bottles of Phensedyl from his possession on the bank of river Padma at Ramchandrapur under Raninagar PS on 02.09.2018. Thereafter sample [in respect of seizure from accused Sagar Sk. @ Capten] was sent to the chemical laboratory for its examination. However the prosecution has not proved the seizure list dated 02.09.2018. I also do find that the investigating agency has claimed that the sample so drawn with respect to the seizure-list dated 02.09.2018 was sent to FSL Laboratory for chemical examination report. However the prosecution has failed to produce or prove the said chemical examination report before this Court. Moreover, the said 1<sup>st</sup> IO who is the vital witness of this case has also not been examined by the prosecution which is fatal for the prosecution case.

24. During perusal of the testimonies of the prosecution evidence on record, I also do find that Motiur Rahaman [PW.5] and Nayan Ali [PW.6] whom the prosecution has cited as independent seizure witnesses in this case in respect of seizure from accused Sagar Sk. @ Capten have not supported the case of the prosecution and for that reason the prosecution has preferred to declare PW.5 and PW. 6 as hostile. It is pertinent to mention here that though the prosecution has declared PW.5 and PW. 6 as hostile, however, nothing incriminating surfaced from his cross examination by the prosecution. It also transpires from the testimony of PW.5 that about 3/4 years ago police came to their village over a dispute in their locality and at that time his signatures were taken on some documents as proof of their coming into their locality. It also transpires from his cross-examination that PW.5 had signed on blank papers not affixed on anything. It further transpires from the testimony of PW. 6 that on the relevant day he was coming from field, riding on a motorcycle and police was going to the opposite direction. At that time, police asked him to stop and inquire him about his name and address. Thereafter police also asked him to put his signature on a paper and accordingly PW.6 signed on only one paper. Therefore I am of the opinion that PW. 5 and PW.6 have not supported the case of the prosecution and makes the prosecution narrative doubtful and such testimony vitiates the search/seizure procedure in this case, which is fatal for the prosecution case.

25. It further transpires from the testimonies of the raiding party members [PW.4 and PW.7] that they have not corroborated the testimony of PW.1 [informant] in material particulars and their testimonies are not sufficient to fasten the guilt of the accused persons in this case. Moreover at the time of examination of PW.1, Ld. Special P.P. has produced three white coloured plastic

sacs and it has been found that two sacs were in torn condition and the third one was found in unsealed and open condition having no labels either outside or inside, hence, the same were not tendered and proved by the prosecution.

26. From perusal of the case record, I do find that PW.4 [C/1506 Raju Dey] is a member of the raiding party team. From the cross-examination of PW.4, it transpires that B.S.F. outpost was within a distance of 1 km. from the P.O. and the office of C.I., Domkal was about 15/30 km. away from the spot. However, no one was called from BSF outpost. It raises doubt regarding the prosecution case.

27. On careful perusal of the record, it is evident that there was no effort whatsoever either by the informant cum seizure officer or the then OC, Raninagar PS to undertake the procedure of sampling and inventory in presence of a Magistrate or a Gazetted Officer in light of the provisions as contained u/S 52A (2) of the NDPS Act which is a major procedural lapses on the part of the Investigating Agency. Such procedural lapses on behalf of the Investigating Agency strike at the very root of the prosecution case regarding the genuineness of the seizure and sampling process wholly doubtful.

28. I also do find that seizure officer cum informant did not prepare any separate seizure list for the samples drawn from the seized contraband articles. Likewise, no 'test memo' or 'inventory list' was prepared at the alleged PO. Apart from that no specimen seal memo was proved by the prosecution. The prosecution has also failed to produce and prove the chemical examination report in respect of seizure from Sagar Sk. @ Capten before this Court which is a major procedural flaws in the prosecution case. The prosecution has not produced or proved any such document to that effect so that this Court may draw an inference that samples were sent to the Forensic Laboratory for chemical examination report.

29. During appreciation of evidence on record, I do find that three mother sacs [A, B and C] were recovered and seized by the Investigating Agency as per the prosecution story. However, the informant collected only two samples from the mother sac [A] and marked them as [A1 and A2] but no samples were drawn from the other two mother sacs [B and C]. This is a major procedural flaws in the prosecution case and it vitiates the entire search/seizure procedure.

30. From perusal of the evidence of prosecution witnesses, it further transpires that the prosecution has not been able to produce or prove the mother

contraband substance [B and C] as well as samples drawn to that effect before this Court in absence of compliance as mandated under Section 52A (2) of the NDPS Act for the reason best known to it. It also transpires that no document from the side of the prosecution has been produced or proved by the prosecution before this court which creates doubt regarding the truthfulness of the prosecution story.

31. In view of the discussions made herein above, I am of the opinion that FSL report loses significant on account of flawed sampling procedure under taken by the informant cum seizing officer and in consequence thereof the FSL report cannot be read in evidence and consequently, there is no acceptable evidence on record to prove that the article recovered from the accused persons was the contraband substance as defined under the schedule to the NDPS Act.

32. Be it mentioned here that it is the cardinal principle of Criminal Jurisprudence that an accused is presumed innocent, until he is proven guilty, and the burden lies on the prosecution to prove its case beyond reasonable doubt. However, I do find that prosecution has not discharged its liability to prove its case satisfactorily and in consequence thereof benefit of doubt goes in favour of the accused and the accused person is entitled to be acquitted from this case.

33. During appreciation of prosecution evidence on record, I have also given thoughtful consideration regarding the accusation as alleged against accused Bachhu Sk and Sainul SK @ Mandal who have been charged u/s 29 read with section 21(c) of the NDPS Act for having entered into a criminal conspiracy for carrying illegal business of Phensedyl with accused Lalon Mandol, Milon Shah, Ratan Sardar and Sagar Sk @ Captain and the recovery of the said contraband substance in pursuance of the said conspiracy. However, I do not find any evidence on record so that this court may draw an adverse inference that the accused Bachhu Sk and Sainul SK @ Mandal were in a criminal conspiracy with the accused Lalon Mandol, Milon Shah, Ratan Sardar and Sagar Sk @ Captain and I am of the view that the prosecution has miserably failed to prove the said charge u/s 29 read with section 21(c) of the NDPS Act against accused Bachhu Sk and Sainul SK @ Mandal. Accordingly, the accused Bachhu Sk and Sainul SK @ Mandal are also liable to be acquitted from the said charge.

34. In the wake of discussion made hereinabove, I am of the opinion that prosecution has miserably failed to prove its case against the accused persons

beyond reasonable doubt, and therefore, the said accused persons are hereby acquitted of the charge u/s 21(c)/29 of the NDPS Act.

Hence, it is

**ORDERED**

that accused Lalon Mandol, Milon Shah, Ratan Sardar and Sagar Sk @ Captain are found not guilty of the charge u/s 21(c) of the N.D.P.S Act and accused Bachhu Sk and Sainul SK @ Mandal are also found not guilty of the charge u/s 29 read with section 21(c) of the N.D.P.S. Act and they are acquitted as per Section 258 (1) BNSS, 2023 / Section 235 (1) of Cr.P.C.

Accused persons are on bail. They shall be released from their bail bonds in connection with this case and set at liberty, subject to filing a bail bond of Rs. 5,000/- each, with one surety of like amount, subject to the satisfaction of this Court, as per Section 481 of BNSS, 2023 / Section 437-A of Cr.P.C. The bail bonds shall remain in force for six (6) months to appear before the Hon'ble High Court in the event of any appeal against the Judgment.

Seized articles/alamats be confiscated to the State and disposed of as per rule after expiry of period of appeal.

Dictated & Corrected by me,

Sd/-

Judge.

(J.O. Code : WB 01303)

Sd/-

Additional District & Sessions Judge,  
2<sup>nd</sup> Court,

Cum

Judge, Special Court, N.D.P.S. Act,  
Berhampore, Murshidabad.  
(J.O. Code : WB 01303)